



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1998

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR98-0346

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112463

Dallas Area Rapid Transit ("DART") received a request for information related to a contract for demolition services that was recently awarded to Phillips-May. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of documents.¹

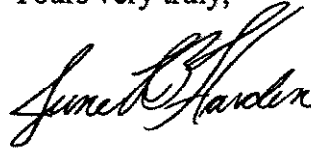
Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). Governmental bodies may withhold bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982), 184 (1978).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You state that two protests have been filed against the award of this contract. Furthermore, you state that "[t]he contract has not been awarded and will not be until the contract protests are resolved." Therefore, we conclude that DART may withhold the requested information pursuant to section 552.104. Once the competitive bidding process is completed and a contract has been awarded, DART may not continue to withhold this information under section 552.104. Open Records Decision No. 541 (1990) at 5.

Because we are able to make a determination under section 552.104, we do not address your additional argument against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/gle

Ref.: ID# 112463

Enclosures: Submitted documents

cc: Mr. Curtis Howell
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)